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Original Articles.

Practical Suggestions to Physicians as Witnesses.

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Probably one of the most difficult and embarrassing situations in which a physician can be placed, is on the witness stand on the trial of a cause in a court of ju[illegible]ne situation of a witness is always more or less embarrassing and perplexing; and old members of the Bar avoid being witnesses even to prove the most unimportant matters. One of the most pregnant sources of embarrassment to the witness arises from being subjected to a cross-examination. To a casual reader it would seem that a truthful witness could tell what he knows concerning a matter in controversy, as well on cross-examination as upon the examination in chief; and ordinarily this is true; but cross-examinations are not invariably conducted for the sole purpose of eliciting truth. On the contrary, when a witness has given testimony of a damaging character to the opposite party, a skilful attorney, unable to contradict it, will seek to avoid its force and effect by attempting (and very often with success) to destroy its potentiality by a sharp cross-examination. The witness having told a plain, straight-forward story, would doubtless relate it in substantially the same

words if he were permitted to do so; but that is precisely what the person conducting the cross-examination will not permit him to do. By a series of adroit questions, often not more than half understood by the witness, he will extract from the witness often unconsciously, answers more or less at variance with the statements made by him in his examination in chief; and it takes but few apparent contradictions, thus obtained, to weaken, if not to wholly neutralize the testimony of the most candid witness.

Bear in mind a fallible jury is watching the witness; and the cross-examiner is constantly, in various ways, directing the attention of the jurors to the witness' answers; and if the counsel propounds his question with an apparent show of candor, he will elicit the sympathy of the jury from the start; and by the time he has concluded his examination, an impression is often created in their minds favorable to him, but which, as matter of fact, is clearly at variance with the real truth of the case.

Without pursuing this line of argument further. I will proceed to the matter in hand.

In the first place, a physician or surgeon, unlike witnesses generally, is almost invariably called as an expert; and if the situation of a witness, ordinarily is surrounded by difficulties, a much more arduous task is devolved upon the expert. As a light battery of artillery, in a battle, draws upon it the fire of all the different arms of the enemy's service, so the expert is usually subjected to the most severe and critical cross-examination. The reason of this, in the case of the expert, is very simple and easy of comprehension, when it is borne in mind that, to a considerable extent he pronounces upon the weight and effect of the non-professional testimony in the case, by stating that, in his opinion, it tends to establish the theory of the prosecution, or of the defense, as the case may be; and to that extent, he usurps the province of the jury, whose duty it is to determine what weight is to be given to the testimony, and what questions of fact it establishes. To make this plain, suppose a case is on trial, involving the mental condition of a deceased testator, and witnesses have been called, who detail a variety of acts, declarations and conversations in support of the theory of unsoundness of the testator's mind, at and near the time of executing his will, then comes the expert testimony of physicians who are presumed to know what acts, declarations, etc., evidence a "mind diseased," and the question is asked: having heard all the testimony on the part of the plaintiff, state whether in your opinion the testator was a man of sound and disposing mind at the time he executed the will? and he answers, that in his opinion he was not.

You perceive that this is the precise question which the jury is to determine, whether he was of sound or of unsound mind; and still the question and answer are competent. Of course, the opposite counsel will exert himself to the utmost to parry or break the force and effect of testimony which has such a decided bearing upon the question at issue. Hence it is that the position of a physician on the witness stand is one of great

delicacy and importance, as well as difficult and embarrassing. It is delicate and important on account of the direct bearing of his testimony upon the vital matter in controversy, and difficult and embarrassing from the trying ordeal of a rigid and well conducted cross-examination, which is sure to follow.

An experience of over a quarter of a century has taught me that physicians, as a general rule, are not good witnesses. In a large measure this is owing to the nature and character of the testimony they are called upon to give, coupled with the fact that but few of them have really had sufficient experience, as to the matters about which they are examined, to make them experts. While any physician may express his opinion upon the questions of mental capacity, in the case above supposed, how few, of the great body of physicians, are really qualified by reading, observation and practical experience, to express an opinion that will really be more than a mere guess.

Judges may charge the jury, as they invariably do, that it is for them to determine the weight to be given to the testimony of the different witnesses; but what does the average non-professional juror know about what weight should be given to the testimony of a particular witness on a matter of this character? As a general rule, the most pretentious and pedantic expert knows the least; and yet, unless his pretentions are thoroughly overhauled and demolished by the cross-examination, a jury is as liable to adopt his opinion as that of his more modest and learned professional brother. There is nothing in his professional career that a competent lawyer enjoys more than the discomfiture of a physician who arrogates to himself more wisdom than is alloted to mankind, while he respects the really learned physician, and treats him with becoming deference.

There are certain considerations that it might be well for any physician to bear in mind when going upon the stand to testify. In the first place, be cool and circumspect; and never forget that your province is to answer questions, not to propound them. Neither assume nor presume anything. Be modest always, for a modest demeanor is very often taken as a substitute for brains. When a question is asked, be quite sure you fully understand it before answering. If you do not thoroughly understand the question, ask the counsel to repeat it. This you have a right to do. When you comprehend the question, answer it, and nothing more. Never volunteer anything. While on the stand never make a suggestion to court or counsel. The true interpretation of your oath as a witness is, that you will answer truly such questions as are propounded to you. By confining your answers strictly to the question, you and the counsel always understand each other. The moment you volunteer anything, it is not only an evidence of an assumption of wisdom on your part, but consequences may immediately ensue quite unexpected to you. You should bear in mind that the attorney who calls you understands his case, and just what he wants to prove, a great deal better than you do; and he has ascertained

from you, before placing you upon the stand, just what he can, and what he wants to prove, by you. By volunteering testimony while he is examining you, you may be stating precisely what he does not want to prove, and thereby defeat his case. This has often been done. More cases are lost by proving too much than by not proving enough.

If you are being cross-examined, never make the mistake of presuming that the attorney does not understand his case, not but that there are instances of that kind. Such a mistake will, in a majority of cases, prove quite disastrous to you. If he really does not understand his case, and you comprehend your situation, you have him at a disadvantage, and by confining your answers strictly to scientific truth, you disconcert him, while you are self-poised. If, on the contrary, he understands his case, by the time your examination in chief is concluded he as thoroughly understands you, and is ready for the encontre. To you it will not be readily apparent how well he has prepared his case, because a skillful attorney is slow to unfold to a witness, who has given important testimony against him, what his theory of examination is. He is more than likely to begin in a way that will lead you to think he does not know what he is trying to do, and if he succeeds in inducing you to "lay that flattering unction to your soul," you will surely come out second best. The moment you come to the conclusion that he is not thoroughly conversant with his case you become heedless and careless in your answers; and have actually fallen into the very trap he set for you. His questions will be then, apparently, more confused than before, but in fact shaped with sole reference to eliciting from you answers which will be found, when skilfully contrasted, at variance with your direct examination. The logical result is, he has over-reached you, and has turned aside, if not destroyed the effect of your testimony. I have known of this mode of cross-examination being crowned with success, a great many times, against very learned and candid witnesses.

If you would avoid being thus discomfited, all you have to do is to remain cool, insist upon your right to have the questions propounded in such manner and form that you will comprehend them, and then answer nothing but the questions, and in the fewest words possible consistant with perspicuity. Under no circumstances make the mistake of volunteering explanations. The witness stand is not the place for exhibitions of that character, especially when you are subject to dissection by an adept at cross-examination.

One of the modes frequently resorted to in cross-examination is to put questions in such form as to elicit explanatory answers. A long answer suggests numberless questions which otherwise might not have occurred to the counsel; and the witness is the victim every time, as it is much easier to ask questions than to answer them, especially by an expert.

Another mode of cross-examination quite frequently resorted to with medical witnesses is, to intentionally ask questions in such manner that the witness will not more than half comprehend their meaning and im-

port. A witness should decline to answer such a question, by simply stating to the court that a question in such a form is not susceptible of an intelligent answer, and ask to have it divided or put in other form, as the case may be. It is never derrogatory to a witness' character or capacity to decline to answer a question until it is put in intelligible form; but if the witness takes the hazard of answering such questions, and retains any respect for his feelings, it would be better for him to be conveniently absent when the counsel makes his argument to the jury. To be an attentive listener might impair his confidence and self-conceit.

With a single illustration I will close this article. An old man became enamored of a woman much younger than himself. and made several indiscreet conveyances of his property to her, and incurred divers pecuniary obligations in her behalf, and thereby became involved in various litigations. In this emergency he and some of his friends and his counsel had a consultation, when he was advised by his counsel that the easiest way out of his difficulties would be to have a committee appointed for him on account of his "extreme old age" (he was about 70 years old), and after that should be done, the committee could undo all he had done, and when his property was reclaimed the committee should be discharged and his property returned to him. He objected, but under the advice of his counsel he consented, as it would be but a matter of form. The committee was appointed; no evidence of mental unsoundness whatever was given, because none existed, and the property in due time reclaimed. When the old man applied to his attorney for his property excuse after excuse was made, and in that condition matters rested for several years, when other counsel was employed and a proceeding instituted to supersede the committee and have the property returned to the rightful owner. His former attorney appeared for the committee and contested the matter. A great many physicians were called and examined, among them the one to whom reference will hereafter be made. The old man was examined, and then cross-examined by his former attorney. To be subjected to a cross-examination by him was particularly irritating to the old man, and the attorney, knowing much of his most private affairs, made a liberal use of such knowledge. A certain physician, whom we will call P for brevity, had an interview with the old man for an hour or two before his examination, and was present and participated in the examination. Dr. P. was subpœnaed by the committee, and the counsel for the old man requested him to ask any questions he desired, and he did so until he said he was satisfied. The examination extended over the entire period of the old man's life. An adjournment was then taken for two weeks, when this physician was examined. He was very pronounced in his opinion that the old man was of unsound mind, and the principal reasons he assigned for such opinion were substantially:

"When you take into consideration the clear and lucid statement of the "early events of his life extended to almost painful minuetness as detailed

"by him, and contrast it with the unreliable and untruthful statements of "the latter part of his life, the conclusion that he is a man of unsound "mind, is irresistable."

—Right here, by way of parenthasis let me say, that the only witness or person who had detailed the events of his life was the old man himself, except as to a few minor details in which the other witnesses fully corroborated him, and that Dr. P. had never seen the old man, and knew nothing of him before the day of his examination.—

On cross-examination the Doctor was asked to state whether the "unreliable and untruthful statements" to which he referred were made to him by the old man in the interview he had had with him, or while detailing his life as a witness on the stand, and his answer was that they were partly made in the interview and partly on the stand as a witness.

Question.—Will you please separate them, and state in the order in which he stated them, such of them as were made in the interview, and then those that were made as a witness on the stand?

Ans.—I cannot do it, sir.

Ques.—Will you proceed to give all of those "unreliable and untruthful statements" made by him upon which you predicate your opinion, that he is a man of unsound mind, without reference to whether they were made in the interview, or as a witness on the stand?

Ans —He stated that he had never been to Canada, and afterwards on ***reflection*** admitted he had been once. His statement about a Jew peddler, and about meeting a man in New York.

Ques.—Proceed?

Ans.—I cannot do it, sir.

Ques.—Well, Doctor, will you please inform me why you characterize some of his statements as "untrue and unreliable" when you never saw or knew anything of him before two weeks ago to-day, and there has been no evidence given here that they were not true?

The only answer was a sudden start, a flushed cheek, and ***silence;*** which answer was entirely satisfactory to the cross-examiner.

Ques.—Now, Doctor, you have expressed an opinion that this old man is of unsound mind because of certain "unreliable and untruthful statements" made by him in detailing the events of a life covering a period of nearly eighty years, without any knowledge whatever on your part of their untruthfulness; what do you say as to the soundness of the mind of the man who will pronounce another man of unsound mind on account of alleged "unreliable and untruthful statements" made by him two weeks ago, who cannot to-day give the statements upon which he predicated that opinion?

Ans.—I had not looked at it in that light before.

Of course, further cross-examination was unnecessary.

This case should be a warning to a physician not to pronounce a man insane upon grounds that would convict himself a great deal quicker, if

adroitly turned upon him, than they would the party on trial. Furthermore, the witness stand is not the best place to "assume a virtue if you have it not."

Medical Department.

ON THE ACTION OF MEDICINE.

Read before the Buffalo Academy of Medicine, April 13th, 1880, by S. N. Brayton, M. D., Prof. of Theory and Practice of Medicine in the College of Physicians and Surgeons.

Mr. PRESIDENT and Gentlemen, I am well aware that the subject, which I have chosen is not only a difficult one to properly manage, but is one which is fraught with more ignorance and foolish theories than any other branch of science or philosophy in the world. In the first place, what is medicine? We can all admit that it is a remedy, when administered properly, neutralizes disease or checks it in some way, but *how* these medicines operate to accomplish the desired object is the question.

The Homœopathic Physician is almost daily met with the question, from those who give larger doses of medicine, how do your Homœopathic remedies operate? "If you can explain the matter satisfactorily we will gladly fall into line." This is a conundrum as great for any class of Physicians as for the Homœopath. Is there a physician in the world who can give the Action of Sulphate of Magnesia or Common Salts, on the human system? One theory is that it acts as a solvent after having been absorbed into the blood, then on the principle of endosmosis. If this is the case why do we not get Ascites, or general dropsy first, for certainly the capillary blood-vessels and veins are thinner and more susceptible to the force of exosmosis and endosmosis than the intestines could be? What law could there be which would cause transfusion here, and nowhere else? Another theory is that it acts by first being absorbed into the blood, then passing through the circulation until a small portion—Homœopathic dose of course—reaches the mucous follicles of the intestines when it stimulates them into action by congestion, as it were, causing them to throw out a thin watery mucous in abundance and hence the Catharsis. If this is so why do we not have salivation, bronchial effusions, mucous discharges from the bladder and other mucous membranes? Why is not the theory that it has a peculiar action on the *nervous system* as fear, excitement, &c., sometimes do, just as tenable? These are theories very shabby which cannot stand alone a moment. Take for another example, Opium. We all know that this drug produces sleep. In small doses it stimulates and

induces wakefulness. It is supposed that it effects the brain and nervous system by a sanguineous congestion—venous—and thereby, possibly, benumbs the nervous sensibilities. If this is the case why do we not have sopor or somnolence from ordinary blushing or any rush of blood to the head? Many explanations have been given, but they are all weak and untenable. It is impossible to explain *how* Opium acts on the nervous system to induce sleep or an arrest of the secretions. All we know is that it sometimes *does* these things and *sometimes* it does not. This then being the case how absurd it is for any one to ask *us how our remedies act.* That they do, we *know*, HOW, *we do not know*, any more than the Allopath knows how his remedies act. Some Homœopaths say in explanation of the action of our remedies that all medicines have two effects diametrically opposite, i e. Opium has a stimulating effect first, then a depressing; Rheubarb an astringent, then a Cathartic; Ergot in small doses will check the contractions of the uterus, while large doses will produce them, etc., and that while we get the primary, the Allopaths obtain the secondary with larger doses. Others will tell us that their medicines cure by establishing another disease, similar to the one already engaging the body, on the theory that no two similar diseases can exist in the same organ at the same time, the natural must yield to the unnatural. In other words, the pigmy will drive out the giant. The first may be possible, but still there has been no satisfactory explanation as to the method these remedies act on glands and organs to produce the desired effect. The last seems to me to be untenable, for after a disease has become firmly seated, it seems impossible to unseat it, in any such way. It may, however, but if it does we have no knowledge of it. So we contend that there is just as much mystery about the action of Homœopathic medicines as there is of Allopathic remedies.

Our opponents will say to us that our remedies are so infinitesimal that it does not stand to reason that they can have any effect whatever, forgetting that disease, or some poisons, will produce *death* if taken into the system in such minute quantities that the microscope of the strongest power cannot detect a trace of it; *e. g.* Small Pox can be contracted by the victim passing by an open window where the disease exists, or even by passing by the house, and so with many other contagious diseases. How insidious is miasma, how active the minutest sting of insects, the slightest scratch from the fangs of venomous serpents or more common still, among ourselves, the slight prick of a needle charged with the poison from the dissecting table. If these have such potent influences for harm, why not the small doses of medicine for good? I can answer most emphatically that they do, and we who have used them can all testify to the truth of the statement, and when I speak of small doses, I refer to the high dilutions as well as to the low. That there is efficacy in the high dilutions no one can question who has used them carefully and in an unbiased manner. I have seen remarkable results follow a dose or a few

doses of some of them when I *know*, as well as we can know anything in medicine, that the benefit did not arise from any mental or outside influence. I have administered Bell. c. c. for headache, and have cured it hundreds of times with that remedy, and can assert positively that where Belladonna *is indicated* the 200th will *cure every time.*

About two years ago a student of mine came to me complaining of a severe palpitation of the heart from which he had suffered acutely for the past three or four years. He had visited different physicians throughout this part of the State and New York City, who had prescribed different Homœopathic remedies, but nothing he had taken seemed to afford the slightest relief. The functional difficulty was so great that the patient could not walk across the room rapidly without producing a *severe* palpitation. He had been taking a dram of Veratrum Viride, an inferior tincture, every twenty-four hours which seemed to control the hearts action for the time being. As an experiment I gave him a high dilution of Digitalis, one dose. Mirabile Dictre! He never has had palpitation of the heart since, and it is now over two years since the Digitalis was administered. The gentleman was as skeptical as I was, so nothing could be accredited to the imagination. I admit that possibly he may have taken too much V V, and therefore the palpitation ceased on its discontinuance, but as he had not taken this remedy constantly I am inclined to doubt that this was the cause of the cure. We might enumerate many other instances of results following the administering of these preparations, as many other Homœopaths could who have carefully used them. If in these cases large doses of medicines had been given the results would certainly have been attributed to the medicine, but our opponents always say the disease had expended itself and was ready to stop.

I am not a believer in, or rather do not use the high dilutions, because I think they are unreliable, but occasionally they seem to act very satisfactorily. Then again the Homœopath who knows nothing of Allopathy says that that kind of medicine kills more than it cures, and so medical men go on year after year, condemning that which they know nothing about, through ignorance, until the medical profession has become a disgrace, in a measure, in the eyes of the public. The great causes of all the differences among medical men are bigotry, intolerance, egotism and ignorance. Sarcastic remarks are too frequently used instead of argument. When medical men get so low in discussion, that they will resort to sarcasm, because they cannot understand the action of some remedies, the efficacy of which can be attested by hundreds of as conscientious men as there are in the world, they should hide their diminutive and ignominious heads or seek some other means of gaining a livelihood. They should be prevented from trifling with human life. When we come to look upon the healing art in an unbiased light, casting aside all prejudice, the word "pathy" will be expunged from our vocabulary, and we shall be known only as Physicians of one grand school. The object of the College of Physicians and Surgeons of Buffalo is to assist in attaining that end.

I am well aware, Mr. President and Gentlemen, that this paper is very incomplete, but I could not afford to take up more of your valuable time for fear you might fall asleep. The ideas are advanced and I leave you to elucidate them.

TREATMENT OF DIPHTHERIA.

T. H. CALLAHAN, M. D.,

Prof. S. N. Brayton, M. D., Editor Medical Department:

Having had a large experience in the treatment of Diphtheria, and had what is called good success. I take pleasure in giving my treatment for the benefit of those who may never have used these remedies in this way, and have had poor success in the treatment of this disease. I am well satisfied that we all know far more about the cause, pathology, diagnosis; etc., of Diphtheria than we do about its treatment; therefore I shall take it for granted that we know when we have a case of Diphtheria.

When called early in the disease see that the patient has fresh air, and his room an even temperature of about 65 or 70. Give the patient a warm soda bath.

If costive, and the tongue shows a thick pasty coat, give a mild alkaline Cathartic. Then commence with Aconite or Veratrum, as the case may be sthenic or asthenic, and with these alternate with Phytolacca. Make a gargle by adding Sulphite of Soda, and Veratrum to a tumbler of water and gargle often. If too young to gargle, swab the throat gently, but by no means be guilty of the barbarous and inhuman practice of cauterizing the patients throat with Nitrate of Silver, Nitric Acid, Carbolic Acid, or any other Caustic. Diphtheria is not a local disease of the throat that can be burned out, as so many are trying to do.

It is a specific virus introduced into the circulation which acts chemically, or otherwise, on the constituent elements of the body, and can be cured without even touching the throat with anything, no matter how it manifests itself, so it does not wholly obstruct respiration. This gargle, in conjunction with pellets of ice, is all that is absolutely necessary as a local application to the throat, in ordinary forms of Diphtheria.

When the mucous membrane is quite red, or lived, with congestion of the parts, or where there is exudation, causing dysphagia and difficult respiration, atomize the throat every two hours with a weak solution of Carbolic acid, or Iodine.

Great relief is sometimes afforded by atomizing with common vinegar, or inhaling the vapor from hot vinegar. At this stage use ice more freely

than ever. Never in the patient's life will he enjoy ice more than at this time, and never will it do him so much real good.

Never try to swab or tear off the exuded membrane, unless it is partially detached, and obstructs respiration. It often happens that the general symptoms indicate nothing dangerous, while the laryngeal are fearfully alarming and prove fatal in a short time. Now the inquiry arises, can this inflammation and morbid impression, either in part, or altogether, be transferred to other tissues, or portions of the body, and thus lesson the destructive influence of the disease on a part so vital as the throat? It is claimed by some physicians, of large experience, that it *can be done.*

I know that I succeeded in saving the lives of two children by putting this theory into practice. In others again I have failed. The treatment is as follows: Anoint the whole body with a mixture of Sweet Oil, Capsicum and Creasote, and give internally Scrofularia and Macrotys. In a few hours metastasis will take place and there will be an erythema and eruption on the skin, and sudden disappearance of the grave laryngeal symptoms.

After treating the patient a few days, with these Sedatives and local applications, we will, in all probability establish secretion and excretion, reduce the temperature below 100, and have an intermission of the violence of the disease.

Now, is the opportunity to institute the most important treatment yet used—in fact I consider it the very best ever used at this stage of the disease, and will be certain to save the patient *Cœteris Paribus*: it is to give Quinine in doses large enough to produce an antiperiodic effect on the constitution, and continue its use until the return of the fever, and the temperature runs up again above 100, then stop the Quinine and commence the sedatives again. The fever periods, demanding sedatives, will grow shorter, particularly if you get the proper effects of the Quinine.

As soon as the sedatives are not required, reduce the dose of the Quinine and give it, and Dialysed Iron alternately, as often as the case demands. As soon as Convalescence begins to take place, and sometimes before, look out for Albuminuria. Examine the urine often. As soon as Albumin in the urine is discovered commence at once with Tinctura Ferri Chloridi, and Helonias, and make use of hot stimulating baths. Continue the Quinine, but omit the Dialysed Iron.

The above remedies are as near specifics for Albuminuria in this disease as can be given.

Should softening of the nervous tissue, and a tendency to paralysis occur, give Phosphorus, Strychnine, Iron and Quinine; and also use Galvanism.

All through the disease the diet should consist of good beef tea, and fresh milk. No solid food should be given until Convalescing.

I have not given the dose of any of the medicines. This I leave to the judgment of the physician, who will have to be governed altogether by

the mild or severe form of the disease; also its different stages, etc. Some cases can be cured by the 3d dil. or trituration, while others will require much larger doses. A certain dose for a certain disease, regardless of conditions, is not Rational treatment, and never cures, except by accident. Give these medicines at the proper time, and in doses to produce the desired effect, whether it be a fraction of a drop or thirty drops; a fraction of a grain or ten grains.

As a rule, however, the dose of medicine should be the smallest quantity that will produce the desired result.

As Diphtheria is an epidemic disease and eminently contageous, under certain conditions, regid sanitary measures must be instituted in every house where there is a case of it. Fresh air, Cloride of Lime and Carbolic acid are the remedies to prevent the disease spreading.

I am particularly anxious to have those physicians who feel that they need a better treatment for Diphtheria to follow the above suggestions. If they will do so I can assure them they will have a lower mortality among their Diphtheritic patients than they ever had before.

Communications.

ABSTRACT OF THE PROCEEDINGS OF THE HOMŒOPATHIC MEDICAL SOCIETY OF THE STATE OF NEW YORK.

BY H. M. PAINE, M. D., OF ALBANY.

The twenty-ninth annual meeting of the Society was held Tuesday and Wednesday, February 10th, and 11th, 1880, at Geological Hall, in the city of Albany. The President, Dr. A S. Couch, of Freedonia, opened the sessions of the Society by appropriate introductory remarks. He then appointed the usual committées on credentials, invitations and the President's address.

The committee on credentials reported the names of upwards of eighty members and delegates present.

Seven prominent members were elected having been previously nominated by County Medical Societies. Dr. E. A. Guilbert, of Dubuque, Iowa, and Dr. H. N. Guernsey, of Philadelphia, non-residents of the State, having been previously nominated, were elected to honorary membership. Nominees for honorary membership, to be elected at the next annual meeting: Dr. J. P. Drake, Nashville, Tenn.; W. L. Breyfogle, Louisville, Ky.; Samuel Potter, Milwaukee, Wis.; F. D. Durkee, San

Francisco, Cal.; John C. Budlong, Providence, Surgeon General of Rhode Island, and J. H. Gallinger, Concord, Surgeon General of New Hampshire.

Next followed the report of the Treasurer, Corresponding Secretary, Medical Institutions, Necrology-Materia Medica and the various changes of the by-laws, regarding the formation and appointment of bureaus and committees were adopted.

The Surgeon General of the State, Dr. Wm. H. Watson, of Utica, announced an invitation extended by Governor and Mrs. Cornell, to the members and the ladies accompanying them to a reception at the Executive Mansion from nine to twelve o'clock in the evening.

REPORT OF THE COMMITTEE ON DR. FOWLER'S RESOLUTION.

Dr. J. J. Mitchell, Chairman, in comparing the present with the last annual meeting of the Society, spoke of the increase of confidence, greater harmony and better understanding of the views of opposing parties, evidently a result of an extensive correspondence and of personal interviews on the part of the committee. The committee found members trammeled by doctrine, rigidly enforced, which they did not believe in. The committee have endeavored to act as peace-makers, by formulating fundamental principles on which all or at least a large majority can agree.

Report. The committee to whom was referred the report upon the State of Homœopathy received by the Society at its last annual meeting would respectfully report:

"That in accordance with the resolutions contained in the report, the members of the Committee have during the year conducted an extensive correspondence with the profession throughout the State."

"They have endeavored to obtain from those who feel agrieved a statement of their cause of complaint; and they have attempted to write in a report to the society, which shall be true to the principles of Homœopathy, and yet broad enough to cover the real issue which seemed to demand the resolution of 1878."

"Your Committee has found a general and most hearty concurrence of belief, in the law *Similia Similibus Curantur*."

"It has found a diversity of sentiment concerning the use of attenuated medicines, and as to the reliability of provings made with them."

"There is also a lack of harmony prevailing throughout the profession, as to the expediency of putting upon record any expression concerning the use of extraneous appliances, when treating a patient with internal medication, administered according to our therapentic law.

"It is very generally conceded, however, that the mere fact of being a Homœopathic practitioner, has debarred no one from the right to use such appliances, if in his judgment they are demanded."

"Your committee wish to draw careful attention to the protest of those engaged in the passage of the resolution of 1878."

"They contend that their position has been misrepresented and the intent of their resolution most unjustly judged."

"It seems to your committee that in their attempt to place themselves in a proper position before the community, they were betrayed into expressions that appeared to be false to the principles they had so long professed, and for which they had so long contended."

"Your committee remembers that words do not always convey the thought intended, and they cannot do otherwise, than exercise the utmost charity towards the movers of the resolution of 1878, and to express their confidence in their protestations. We deem it expedient however, to calmly and decidedly put ourselves upon record as misrepresented by it, and we wish to do this in plain and unmistakable language.

"Your committee therefore suggests that the resolutions, which they herewith present, be adopted as a substitute for the preamble and resolution passed by this society in 1878, as expressing the views of this body in regard to the matter under consideration.

"1st. That we adhere to the formula "*similia similibus curantur*," as enunciating the great therapeutic law for the treatment of disease, evolved by induction, formulated by the venerated Hahnemann, tested and approved by thousands of physicians, during scores of years, we are assured that with our increased knowledge of the materia medica, we shall be able to demonstrate more fully its universality as a therapeutic law, and show in a more perfect manner its harmony with other and cognate natural laws."

"2nd. That we clearly and emphatically distinguish between a therapeutic law and the laws of chemistry, physics and hygiene, and while in the treatment of disease, the formula, *causa sublata tollitur effectus*, is often to be remembered and used with advantage, yet such laws and such action in no way infringes upon or invalidate the therapeutic law, *similia similibus curantur*."

"3rd. That in subscribing to the law of *similia similibus curantur*, we have not in the past, nor do we now, yield one tittle of our rights as physicians, to use any means or appliances of the general profession in the treatment of our patients, or in the palliation of their suffering, through the application of any physical, surgical, chemical or hygienic law, leaving the question of such use to the individual judgment of the practitioner."

"4th. That the great work of our school in the advancement of medical science is the proving of drugs, the enlargement, purifying and verifying of one materia medica, and its practical application in the treatment of disease."

"That we point with just pride to the work we have already accomplished, and we recognize in the continual appropriation of the results of our labor by other schools of medicine, a virtual endorsement of our work and a tacit acknowledgement of its value."

"5th. As we have been unable as yet to deduce a law, to guide us in determining the *amount* of a drug to be used, or the *attention* to be exhibited in order to meet the demands of any case most accurately, this society, while on the one hand it refuses to join with those who decry attenuated medicines, on the other, will not refuse to recognize those, who governed by their honest convictions, can only exhibit crude medicines or the lowest attenuation in the treatment of the sick."

"6th. That, contrary to the opinion held by some, we most thoroughly endorse, and would most earnestly enforce, the study of pathology and pathological anatomy in our schools and by our students as determinating in the direction of a broader medical culture."

"7th. In conclusion, we would most frankly and fully join in the motto. '*In certis unitas in dubiis libertas, in omnibus charitas.*'"

JOHN J. MITCHELL, Newburgh,
A. S. COUCH, Fredonia,
A. W. HOLDEN, Glens Falls,
W. C. DOANE, Syracuse,
} *Majority of Committee.*

After considerable skirmishing the report was adopted by a vote of 33 to 15.

The arguments offered by the opposers of the resolutions consisted of negative qualities chiefly, the points mainly advanced being, that a formal declaration of principles was unnecessary and even harmful as indicative of a want of confidence in the universality of application of the Homœopathic law. While they were willing to use any and all other measures they were not disposed to make public acknowledgment to that effect.

The argument advanced by the majority was chiefly embodied in the remarks by Dr. Doane. He stated substantially, that there was nothing objectionable in the report or in the resolutions. They were the result of an extended correspondence on the part of the committee with Homœopathic Physicians throughout the State; they clearly and forcibly express the sentiments of a majority of the profession. By formally adopting them the controversy on this subject will quickly terminate. They leave the question regarding liberty of opinion and action where it ought to be left, viz., that he who believes in our law of cure, and practices according to his best ability, is a Homœopathist. He had followed this plan since his membership in the Society, more than twenty-five years. He believed the Homœopathic to be the best therapeutic system, but not the only available and useful one. He held it to be his duty at the bedside of the patient to use every known method extant, and that he would do in spite of any organization under the sun.

If all the members have this privilege, as is most assuredly the case the Society ought to sustain them in the enjoyment of it. A church having a code of morals that its members could violate with impunity would lose its character and influence. We claim the right to practice as we please, and some present say, the Society should cover the breach. Is that the best course for the Society to pursue? No, let the Society rest on a liberal sound and generous basis before the world, and declare that it stands behind its members and endorses their acts. I would not give a fig for a Society that cannot be as independent and manly as its individual members.

Editorial Department.

THE SECTS IN MEDICINE, AND HOW LITTLE THEY DIFFER IN PRACTICE.

There are but three schools recognized by the State Laws. Allopathy Homœopathy and Eclectic Medicine.

1st.—Allopathy, usually called the "Old School" in consequence of its antiquity, is that method of treating disease by establishing in the system a condition opposite to, or different from the disease to be cured, hence *Contraria Contrariis Curantur.*

2nd.—Homœopathy is that mode of controling morbid conditions by remedies that establish in the system conditions like or *similar* to those to be cured. In accordance with the well established fact, that two likes or similar diseases cannot exist in the system at one and the same time, hence *Similia Similibus Curantur.*

3d.—Eclectic Medicine or Eclecticism is that school established by Archigenes and some others who selected from all other sects what appeared to them to be the best and most rational. They first excluded the minerals and particularly all the preparations of mercury, and substituted botanical medicines.

The Allopathists are the only practitioners of medicine that enforce a therapeutic accord, and not unfrequently ostracise members from the State and County Societies for using Homœopathic Medicines or counseling with what they choose to call irregular practitioners.

Is this as it should be?

Let us see how much or how little the reformers or the liberal members of the three systems differ.

1st.—The Allopathists have long since ignored the massive doses, and their law of cure has become obsolete, and while they are not quite willing to concede that medicines cure, in accordance with the selection by the law of similars, they are daily using the remedies introduced into the Pharmaceutical world by those who have made rapid strides towards the great desideratum.

2nd.—The Eclectics having seen the folly of excluding the best remedies in the mineral kingdom greedily prehend the *feginous* mercurial and all other preparations that have been analyzed in the crucible of experience, and administer remedies more with a view to their specific or alterative action concedeing the truth of the laws of both *Contrarius* and *Similibus*, in which respect they do not differ in the least from the rational or non-extravagant Homœopathist. This latter class thoroughly com-

prehending the value of *Similia*, and knowing when, where and how to apply their similimums, use everything outside its domain that the experience of all schools has promulgated.

How few then are the differentials in the most approved systems of Medical and Surgical practice? Hardly enough. one would think to create so much discord, and the necessity of so many Societies differing in their ethics, rules and regulations.

When the New York State Commissioners are delegated to examine a candidate for the degree of Doctor of Medicine, or to grant a license to practice in this State, the law makes it obligatory on their part to examine as thoroughly in one system as the other, and hence the applicant must needs be well tutored in ALL schools, in order to be crowned with the laurels of the NON-SECTARIAN TITLE, "Physician and Surgeon." This is as it should be, and we would that every medical college in the United States were compelled to submit their candidates for degrees to a like board of examiners. A physician with such qualifications, when asked to what school he belonged, would very naturally respond, to the NON-SECTARIAN SCHOOL OF MEDICINE, empowered by the highest authority in the land, and do not require any society, clique or clan to dictate how he shall or shall not use my remedies.

A man should be estimated according to his worth, and not by the diploma he has received from some sectarian school.

Educated to combat disease only by one method, to prepare remedies after one formula, to administer them only in certain doses, and to be governed by a distinction, dogma or system, is to be half educated and half prepared for the battle-field of disease. Such a physician is only entitled to the position of a nurse, he should not be entrusted with the lives of human beings.

What would we think of a railroad company who would employ a bridge-builder conversant with but one method of constructing, bracing and staying a massive structure? Or an architect who would construct a mammoth amphitheatre with but one small door for egress?

The physician is the engineer who has charge of the most complicated piece of mechanism God ever made, and he of all scientific men should thoroughly comprehend every method, means and measure of correcting its irregularities and abnormal conditions.

A compulsory curriculum should be inaugurated by the Legislature that would blend the three systems into the one non-sectarian school.

When we entered the field of medical journalism, three months since, we felt that there should be a distinction made between that which appeared to us as reasonable and unreasonable, rational and irrational, and hence we made known our platform, based as nearly as possible upon non-sectarianism, giving preference and prominence, however, to the great law of *similars*

We did not expect to please everybody, for they are not a few who do not concur with our ideas of rational homœopathy, and many on the other side are so bigoted that they will not reason for a moment with an advocate of the theory of ***similia.***

We expected all sorts of criticism, and all kinds of captious expressions, particularly from those who adhere strictly to homœopathy.

Thus far they have been limited to the veterans, to honorable and distinguished gentlemen, and to those who would be expected to say something. Thanks to the ***Hahnemannian*** for its very kind, considerate four-page notice in the February issue. The ***American Homœopath*** differs from us in denying the existence of homœpathy being practically "irrational." We have no disposition to argue the question. The casual, observing non-professional, too, has a right to an opinion: who among the latter class, even, could read the article on miscarriage and its treatment—with over 500 remedies—in the Hom. Jour'l. of Obstetrics for Feb, and not be disgusted; and what sensible man, what experienced practitioner would hesitate to pronounce it irrational? We believe all the remedies necessary to treat an agravated case, could be written on a finger nail, and yet this learned Author and Editor devotes no less than eight pages to the names of the medicines that are indicated in that simple accident. Thus, to avoid its occurrence when there is a predisposition, he names twenty remedies. When abortion is threatened 43, while he combats the malady with 82 drugs depending upon the cause that brought it about.

The character of the discharge, however, requires 169 remedies. The character of the pains 67. The condition of the mind requires no less than 91, and may be elucidated somewhat like the following: each emotion demanding a change of medicine, Anxiety, moderate and great Timerousness with great fear, Nervous excitability. Cannot bear to be talked to. Confusion of mind. Cries and trembles. Desire to talk about her condition. Dread of men,—how long since.—Full of desires. Illusions, Irritable, Lascivious Mania, Laughter, Loquacious, Irrelevant answers. Stops thinking for a moment. Quietly disposed. Thinks of her "cousins, sisters and her aunts." Thinks herself well. Thinks she is not at home, and time seems a long while to her, and so on ***ad infinitum ad nauseum***, etc., etc., to say nothing of his dinamisation ideas, we think this is quite enough to question a mans sanety or rationality at least.

In the same journal is an article on the same subject by Prof. R. N. Foster, M. D., of Chicago, in which the reader can readily see the difference between sense and non-sense, rational and irrational Homœopathy.

But says the "American" Editor, "Homœopathy is truth. There can be no irrational truth."

Festina lente, my dear doctor. We spare your blushes, and only ask if you really believe, and honestly think there are no true absurdities in the School of Homœopathy?

We anticipate the reply.

'The school or system cannot be responsible for individual absurdities, opinions and teachings.' Quite true, but it is the multiplicity of absurdities taught, which has cast the stigma and opprobrium upon the system.

While we fully concur with the declaration that "Homœopathy is truth," we believe its teachings have been so perverted, that there is today, a true and a false, a rational and an irrational Homœopathy.

Our diverging lisence limits the digression, and the conclusion of our theme declares the rational Homœopath, and the modern Eclectic or Allopathist are *pari passu*, approaching the goal of non-sectarian medicine. The chief differentials consisting principally in theory, and not in posology, or the selections of remedies to combat morbid conditions.

If those "Old School" gentlemen who have so long been traveling in the rut of antiquated medicine, and guided by the opinion, and teaching of old masters would think for themselves more, and reason with advanced and progressive science, they would very soon see that they had been grooping in the dark, "like a blind horse on a tread-mill." Our professional prayer is, that He who doeth all things well may open the eyes of the blind, and those who wilfully hear not, may have their *portio mollis* irritated, and their sense of duty stimulated to reach out after something more tangible, more enjoyable and satisfactory.

And may they be endowed with the spirit of inquiry, and research, of energy, ambition and reform, and be brought into the fold of rationalistic medicine where truth as taught by experience in all schools, shall be the unsectarian guiding star. But that the law of *Similia* shall crown with glory all efforts made for the salvation of patients within its domain.

Amen.

Legal Department.

Opinion of Attorney General

CONCERNING COLLEGE OF PHYSICIANS AND SURGEONS, COMMUNCATED BY TRACY C. BECKER, A. B., LECTURER ON MEDICAL JURISPRUDENCE AND ATTORNEY FOR THE COLLEGE.

BUFFALO, N. Y., April 2nd., 1880.

To the Faulty of the Homœopathic College of Physicians and Surgeons:

GENTLEMEN.—In reference to the application made by certain persons in this citty to the Attorney General of the State of New York, to bring an action against your College corporation for the dissolution, thereof, I have the honor to report as follows:

That pursuant to your instructions, and having like yourselves, simply heard a rumor that the Erie County Homœopathic Medical Society or certain members thereof, were publicly stating that such an application had been made to the Attorney General, I took the liberty of addressing a letter to his 1st Deputy, Hon. Wm. B. Ruggles, with whom I was personally acquainted, asking him if any charges had been prefered against your College, and calling his attention to an opinion of the late Hon. Attorney General Augustus Schoonmaker, Jr., of which the following is a copy.

"State of New York,
Office of the Attorney-General,
Albany, January 23, 1878.

Robert A. Gunn, M. D.,

DEAR SIR:—In reply to your letter of the 22nd inst., I have the honor to transmit to you a certified copy of the opinion of the Attorney-General in the matter of the American Veterinarian College.

Very Respectfully, W. B. RUGGLES,
1st Dep., Attorney-General."

(OPINION)

"Office of the Attorney-General,
Albany, May 16th, 1878.

Hon. Samuel Marsh,

President Board of Trustees of the American Veterinary College.

DEAR SIR:—

In answer to your communication requesting the opinion of the Attorney-General, whether a College or university incorporated under the general laws of this State, has authority to confer degrees in the same manner as Colleges and Universities chartered by the Regents of the University or by special act of the Legislature. I have the honor to say that in my opinion ***the authority to confer degrees is the same in every College duly incorporated without reference to the manner of incorporation.***

Chapter 51 of the Laws of 1870, authorizes the incorporation of Universities and Colleges under chapter 319 of the laws of 1848, being the general law for the incorporation of Benevolent, Charitable, Scientific and other Societies. A College thus incorporated is chartered by the State, and is subject to the general provisions of laws relating to Colleges, and has the powers and authority conferred by law upon such institutions. By Section 36, of Title 1, Chapter 15, of Part I of the Revised Statutes the powers of the Trustees of every College chartered by the State are enumerated. Sub-Division 10 of that Section authorizes the Trustees "to grant such literary honors as are usually granted by any University, College or Seminary of learning in the United States; and in testimony thereof to give suitable diplomas under their seal, and the signatures of such officers of the College as they shall deem expedient.

I think the Colleges and Universities incorporated in pursuance of the act of 1870, before referred to, possess this authority in common with the like institutions chartered by Regents of the University or by special act.

Very Respectfully, A. SCHOONMAKER, Jr.,
Attorney-General."

State of New York,
Office of the Attorney-General,
Albany, January 23, 1879.

I hereby certify that I have compared the annexed copy of the opinion of the Attorney-General with the original, thereof, on record in this office, and that the same is a true copy of the original and of the whole thereof.

(L. S.) W. B. RUGGLES, 1st Deputy Attorney-General.

To this communication a reply came that no charges had been made against the Homœopathic College of Physicians and Surgeons, but that a complaint had been made that George W. Cothran, Zebulon Ferris, S. N. Brayton, S. W. Wetmore and others associated under the name of the Buffalo College of Rational Medicine were unlawfully claiming to be an incorporated body, and to grant Degrees, etc., as a Medical College, and then to be dissolved as such. The application for an action against that corporation was signed by Lewis and Rice, Esqs., as Counsel for the applicants, but who the applicants were, I have never yet been able to learn, nor why they should choose to direct their application against a charter that had never been acted upon.

But suspecting that the real object of this proceeding was to test by this complaint against the College of Rational Medicine, the validity of your incorporation, and despising any new technicalities, I appeared before Hon. Hamilton Ward, Attorney-General, on the 21st of Feb., 1880, and opposed any proceeding on his part against that institution or your College, either one upon the ground that both were fully and legally incorporated, by virtue of Chap., 51, of the laws of 1870. I requested a notice of any decision, and to-day received the following notification from the Attorney-Generals office.

(COPY.)

[SEAL.] STATE OF NEW YORK,
ATTORNEY GENERALS OFFICE,
ALBANY, March 30, 1880.

Tracy C. Becker, Esq.,

DEAR SIR:—Herewith we send you copy of a letter this day mailed to A. G. Rice, Esq., of your city.

Very Respectfully, W. E. YAGER, Clerk.

(COPY.)

[SEAL.] STATE OF NEW YORK.
OFFICE OF THE ATTORNEY GENERAL.
ALBANY, March 30th, 1880.

A. G. RICE, ESQ., Councellor, &c.,
14 Court Street, Buffalo, N. Y.

DEAR SIR:—After examination of the papers on the application to commence an action against the corporation of the "Buffalo College of Rational Medicine," and in view of Chap. 51, Laws of 1870, which you seemed to have overlooked, the Attorney General is not clear that the action could be maintained, and is therefore obliged to decline to commence the action.

Very respectfully, yours,
HAMILTON WARD, Att'y Gen'l.

I am of the opinion, gentlemen, that this determination of the Attorney General is a final disposition and denial of the application of your enemies, and put an effectual end to any hopes they may have cherished of injuring our college by precipitating an attachment upon its corporate existence and franchise, on the part of the chief law officer of the State. As such officer he has a right to exercise his discretion, and having once exercised it, he will not and cannot be disturbed therein by the courts. This point has been decided by a recent case in the Supreme Court.

You may now continue your instruction, and with the sanction of the Board of Trustees may confer such degrees as the legal and intellectual qualifications of your students entitle them to receive, without fear or favor, of any man or body of men.

The whole course of action pursued by those who are hostile to your plans and purposes, shows that they have willfully or ignorantly attempted to deceive the public, and to injure your institution without just cause for complaint. Now that you have triumphed you may proceed upon your chosen pathway of non-sectarian or liberal education calmly and quietly, but steadfastly disregarding their malicious machinations, and sending forth your graduates to the world with full confidence that they will have all the legal rights and privileges of physicians and surgeons under the laws of this State.

Carpenter vs. Blake.

AN IMPORTANT DECISION BY THE THE HIGHEST COURT OF NEW YORK STATE FOR AN ACTION FOR MAL-PRACTICE.

BY T. C. BECKER, A. B., EDITOR LEGAL DEPARTMENT.

Pursuing the course indicated by our announcement, concerning the Medico Legal Department of the INVESTIGATOR, we desire to call the attention of Physicians and Surgeons, and others interested to a very important decision by the New York Court of Appeals in a case recently determined, and just reported in Vol. 75, New York Reports, page 12. The action was brought by one, Levantea S. Carpenter, against Zara H. Blake, a Physician and Surgeon, practising in one of the Western counties of this State, for damages alleged to have been caused by negligent treatment of a fracture of the elbow-joint of the plaintiffs left arm.

It was claimed by Mrs. Carpenter. 1st.—That through negligence or want of skill, Dr. Blake, never in fact, reduced the dislocation and 2nd.—That if he did so he negligently omitted the necessary precautions to keep the bones in place, and that in consequence thereof they became displaced.

All these allegations were of course denied by the defendant, who seem. from the testimony to have been a doctor of high standing and professional reputation. For the purposes of this article it will be unnecessary to examine the testimony at the various trials, for all that we wish to notice here is the new, and we think just rule, enunciated by Mr. Justice Miltler, and concured in by the rest of our able Court of Appeals, as to the Legal effect of contributory negligence on the part of the patient after the termination of a Physicians or Surgeons employment.

This somewhat turbid statement will be cleared up further on. We must now bring out some of the facts of the case, in order that the reader may see how this interesting and novel question arose.

It appears that the plaintiff was thrown from a horse, and suffered a dislocation of both bones of the forearm backwards. The defendant was called upon to reduce it. He did so as he testified by "drawing her elbow around his knee and flexing and extending, and rotating the arm at the time of the operation." He then put her in bed placed a large pillow by her side, and placed her arm upon it at "as near a right angle" as he could judge. At no time after was any attempt made to use a sling or splints.

This it seems to us was the real point upon which the case turned at the trial. That is, whether it was or was not negligence on the part of the defendant not to have so dressed the arm and arranged it that it could not again become displaced by any mishap or involuntary movement on the part of the sufferer; and it was upon this that the principal expert witnesses were called to give their opinions. As usual considerable diversity

of opinion was found between the witnesses sworn for the plaintiff, another for the defendant, and it was therefore according to our practical custom left as a question of fact to the jury to say whether the subsequent deformity that occurred, was or was not due to this method of treatment. That such deformity occurred was too plain to be disputed. But it further appeared that about a week after the injury occurred the defendant dismissed himself from the case as he claimed, because plaintiff's family physician had been called in and had taken charge of it. He testified, he did not tell her that her arm was all right or anything of the kind, but as to this she flatly contradicted him and swore that he told her and her sister that "the arm was all right, that he considered it all right," that if she "needed any care from her family physician he would let her, etc ," and that he afterward saw her again casually at her gate and examined the arm, and told her that she must use it all she could, bend it all she could, and on her complaining that she could not do this because of the great pain, he said then, that her sister must do it for her, and then after that she did not see him, but followed his directions. On these points the plaintiff is corroborated by her two sisters.

On the part of the defendant it was urged at the trial that if the jury found that the deformity or stiffening of the elbow-joint which occurred, happened by reason of any negligence of the plaintiff after defendants dismissal she could not recover, but the learned judge at the trial held that inasmuch as there was some evidence tending to show that plaintiff had been misled by defendants statement, that her arm was all right, this rule of law would not apply.

On appeal his Honor, Judge Miller, who wrote the opinion of the Court of Appeals not only sustains this ruling, but he goes a step further and introduces a novel principle of the law of mal-practise, one that on thorough search of the leading cases we have not been able to find anywhere attempted to be established. Yet on the whole it seems to us, as intimated above, it is one which appeals to our sense of justice, and in the long run must work a benefit rather than an injury to litigants in cases of this character. We give his decision in full, see 75, New York Reporter, page 15, reserving further comment until it has spoken for itself.

Miller J. The rules which relate to the liability of a Surgeon for negligence or want of skill while engaged in the discharge of the duties of his profession are correctly laid down in the opinion of the General Term, in accordance with the views expressed by Allen J., when this case was heard upon a former appeal in this court. These rules do not demand that in order to sustain an action against a surgeon for mal-practice, that there should be proof of gross culpability upon the part of the surgeon, but place him in the same position and subject him to the same degree of liability as attaches to persons who are engaged in the performance of services which require skill and care, and who are held responsible for a failure to exercise proper care, and who are negligent in the discharge of

the duty imposed upon them. These principles being well established, it is not important to examine in detail the reported cases bearing upon the question, or to reconsider the grounds upon which they are based.

It is urged by the defendants counsel that the court were in error in refusing to dismiss the plaintiff's complaint, and that whatever rule of liability may be held to apply the evidence fails to establish any right to recover against the defendant. The position takes rest upon the assumption that there is no evidence whatever to uphold the finding of the jury, either that the defendant did not possess the requisite skill to reduce the dislocation or that there was any neglect or want of proper care in the performance of the act, not responsible for what occurred after he committed the case to the care of the family physician of the plaintiff. In the first place it was a disputed question of fact, as we have seen, whether the arm was ever properly set; but even if such was the fact, if by reason of want of skill or the negligence of the defendant while he had charge, the bones again became displaced, or when he afterwards assumed to act in the case, he did so as the plaintiff's surgeon, and the injury was caused, we think, that the defendant was liable. The Judge properly charged if the defendant was dismissed with the assent of the plaintiff, he was not responsible for subsequent results, yet if he deceived and misled her and the arm was not in good condition, he was responsible, unless the injury occurred after that time. If he acted subsequently in the capacity of a surgeon after he consulted her as such, it becomes therefore material to inquire whether there was any testimony whatever to sustain the verdict, and it matters not whether there was a want of the requisite skill or an omission to exercise a proper degree of care; for in either contingency the same result must follow, and the defendant would be liable for the injury caused and actually sustained by the plaintiff.

The defendant's counsel claims that the dislocation was properly reduced and that the elbow-joint of the left arm which had been displaced, remained in its place so long as the defendant attended the plaintiff and until another surgeon was called. There is evidence which showed that the process, which the defendant adopted in reducing the dislocation as stated by him was the proper one, and it was approved of and sustained by the testimony of several surgeons and physicians. But such evidence is not without contradiction, and there is a dispute in the testimony as to whether the plaintiff's arm was set at all, and even if it was, whether the proper course was pursued in reducing the dislocation. As to the setting of the arm the defendant testified that he did reduce the disolcation. This is denied by the plaintiff, and if the plaintiff's testimony is to be credited the injured limb did not present the usual symptoms, attending the placing of the dislocated bones in their proper position. On the contrary there was every indication for a continued displacement from the twenty-eighth of June until the second effort made to reduce the dislocation in the month of September following, and after that time a permanent injury to the arm from which the plaintiff has never recovered.

According to the plaintiff's testimony she did not discover that the bones were restored to their place by the ordinary manifestation of the noise made when such an occurrence takes place or being relieved from pain. She also testified to the fact that after the operation had been performed, there was a protuberence in the elbow-joint that has never disappeared. She is supported by the evidence of Leach, who testified that after the defendant had left his patient on the very evening, that he attended the plaintiff to reduce the dislocation, he saw the plaintiffs arm and discovered a prominence back of the elbow in the nature of a projection very much as it was at the time of the trial.

According to all the testimony in the case this was a certain indication that the elbow still remained dislocated and had never been put in its proper place, and the evidence tends strongly to show that this prominence remained and continued unreduced from the time it was first discovered.

It is no sufficient answer to this evidence to say, that Leach was not to be believed or that his testimony was probably false, or that he may have made a mistake. Nor can it be urged, we think, that his testimony should be entirely disregarded upon this appeal, because he was not on friendly terms with the defendant or that the fact that it was not observed by others present until a latter day, or because Drs. Blake and Endrass' testimony is in conflict with the evidence of Leach, that therefore Leache's evidence should not be considered. The question as to Leache's credibility as well as the other matters to which we have referred were for the jury, and it does not rest within the province of this court to determine where the evidence is contradictory to the extent disclosed by the record before us that certain portions of the testimony should be ignored. The strong fact that the limb was useless afterwards to the plaintiff with proof of the circumstances already considered, presented evidence for the jury to determine certainly whether there was a failure to perform successfully, not an uncommon operation in surgery by reason of negligence or a want of skill, and which might be regarded if the plaintiff's testimony was to be believed, as fastening a liability upon the defendant.

Another fact should be taken into consideration, and that is the manner in which the defendant performed the services required of him. The defendant swears that when he set the arm he extended, flexed and rotated it where he set the joint, to ascertain whether the bones were in the right place, and that he was satisfied that they were. The plaintiff denies that this was done. It is not questioned but this was the proper and correct treatment for such a case, and although it is quite probable that the defendant was in a better condition to know and to remember what he did than the plaintiff, who was nervous and afflicted with pain. Yet it was for the jury to say where the truth lay in reference to this branch of the case. To contend that the testimony of the attending surgeons is entirely controlling, is to ignore well-settled principles which are applicable to trials of issues of fact before a jury. It was also controverted upon the

trial whether the arm after it was set was placed at a right angle as was claimed, and the necessary means resorted to for the purpose of keeping it in that position; and it is urged that the defendant was negligent in having omitted to give it such support as was essential for that purpose. The arm was placed upon a pillow, and assuming it was testified by the defendant's witnesses that the position was entirely right, and that the witnesses for the defendant were entirely reliable, the question arises whether prudence and ordinary skill did not demand that some means should have been taken to keep it there. It was dangerous to straighten the arm or to move it out of its place, and yet it was left without anything to keep it in place and subject to the risk of being displaced by the excitement of a nervous woman, afflicted with pain and suffering, and liable in her anguish to change the position against the consequences of her imprudence or want of self-control rested with the defendant. Neither a sling, which is a common mode according to some medical authorities, nor splints which might have been used, were employed. No measures in fact were taken to prevent the joint, if actually set, from being again dislocated. No intimation as some of the evidence shows, had been given to those who attended the plaintiff of this great peril, although instructions were asked for, and she was left in charge of those who by reason of their ignorance or inexperience and vigilance, which, if proper knowledge and information had been communicated, might have been observed. It is said that Mrs. Miller, who attended the plaintiff, admits that the defendant gave directions to "stand and watch." Whether this was sufficient to point out the danger and to guard against reluxation, is not entirely manifest, as the language employed conveyed no information of the nature of the difficulty which might ensue or how to guard against it. If there was a negligent omission in the particulars indicated, or unskillfulness, the liability of the defendant was the same. Proper instructions may have avoided much of the suffering to which the plaintiff was subjected and prevented the serious consequences which followed.

The defendant claims that the arm was put in its place, and remained so as long as he had charge of the plaintiff, and therefore the defendant was only responsible for any neglect or unskillfulness on his part which occurred in the discharge of his duty.

In the discussion which has been had, I have referred to the position assumed by the counsel for the appellant, in favor of the ground taken that the complaint should have been dismissed, and it is obvious that sufficient reasons are apparent for submitting the case to the jury, it was entirely clear from the testimony that the plaintiff has sustained an injury which subjectod her to great pain and anguish, and has probably caused her to be a cripple for the remainder of her life. It is equally plain that this is the effect of not having the dislocated limb properly reduced, or if it was so reduced by reason of a reluxation of the injured joint. The questions to be decided were, first, whether the defendant possessed the ordinary skill of a person acting in the capacity of a surgeon: and second,

whether if he did he was negligent, or not applying the proper treatment to the plaintiff. These were peculiarly questions of fact for the jury, and there is no sufficient ground for holding that the facts, embracing as they did a large and extended field of inquiry were of such a character as to take the case from the jury and to authorize a holding that as a matter of law the complaint should be dismissed. Upon the trial the following question was put to the plaintiff upon her examination as a witness: Did you rely upon what the doctor told you about the condition of your arm at these various times when he examined it? This was objected to. The objection over-ruled and an exception taken to the ruling. The objection is placed upon the ground that the plaintiff was or had been under the charge of her own surgeon, or if not, that she had no surgeon of her own. There was evidence shown that the defendant had really dismissed himself for the reason that his services were no longer required. He subsequently, however, called and gave directions as to the arm and made various statements as to its condition. I think it may be assumed, so far as this question is concerned, that at the time he occupied the same position as if he acted continuously. But whether he really was in the case continuously or otherwise, there could be no objection in the question. If what was said in regard to the arm misled the plaintiff in respect to the importance of giving it additional attention and prevented her employing a surgeon for that purpose, no reason is apparent why he should not be held responsible for the consequences which followed. The defendant had been her original medical attendant and adviser, and it was reasonable to suppose, even if he had not continued treating her after he had left, the case that his advice would be followed. That she believed what he did say as to the condition of the arm is an excuse for not knowing that the arm was improperly set, and if it was not for using other means to secure proper treatment to remedy the difficulty. Nor is it an answer we think, to the considerations suggested that the plaintiff was or had been under the charge of another surgeon, or that the conversations between the plaintiff and the defendant, acted in a professional capacity. A similar objection was urged in a subsequent part of the case to a question put as to the reason why the plaintiff did not apply to some other surgeon to have her arm examined, and must fail for the same reason which render the prior question which has been referred to competent. The other objections as to the admissibility of evidence were not pressed upon the argument and we think have no merit.

Various exceptions are also taken to the charge of the judge and his refusals to charge. The first request, the omission to charge, which is claimed as erroneous, was, that under the pleadings in the case the plaintiff could not recover from any misleading or deception at the time the defendant dismissed himself. The same question was raised by exception to the charge that the defendant would not be responsible unless he misled the plaintiff when he dismissed himself. To the last exception the judge responded that he did not intend to charge in that way, unless by his lan-

guage she had a right to understand she did not need a surgeon any longer. No claim was made by the plaintiff for damage in this respect, and hence there would seem to be propriety in the request and it was not pertinent to the case. Independent however, of any such consideration, the request made would exclude a recovery for damages for the want of skill and negligence of the defendant in setting the arm which may have been occasioned by misleading the plaintiff. If by reason of the defendant's ignorance or his negligence, he had induced the plaintiff to rest quiet, and lulled her into security so that she was misled or deceived, and failed to employ a surgeon in due season, or to use the necessary precautions to prevent the joint from being displaced, after he had, as claimed set the same, it would seem but just that the defendent should be liable for such misleading and deception. The allegation was that the defendant was chargeable with malpractice at the time he attempted to set the arm, and that he ignorantly and negligently failed to accomplish a reduction of the dislocation, or if he did so that it was carelessly allowed to reluxate on the very night of the operation. The defendant claimed that the plaintiff should have called the other surgical aid, if a mistake had occured, and to rebut this position it was proved that this was not done because the defendant himself represented to the plaintiff that the arm was properly set, and would come all right in time, thus causing her to desist from employing any other surgeon.

[CONCLUDED NEXT MONTH.]

News and Miscellany.

We have been induced to publish the following which is self explanatory. Choosing to keep aloof from individual controversy, we decline al requests and opportunities to be the medium through which much discord and ill feeling might pervade our ranks. Having been informed however, that the Journal in which this should have appeared last month refused to publish it, and believing it proper, just and right, that the party attacked should have an opportunity to show his professional standing we cheerfully give space to the communication from Milwaukee.

At a special meeting of the Milwaukee Academy of Medicine, held Feb. 21st, 1880; present—Drs. E. M. ROSENKRANS, LEWIS SHERMAN, E. W. BEEBE, E. A. GATCHELL, MARY E. HUGHES, E A. STORKE, and SAMUEL POTTER. Professor CHAS. GATCHELL, M. D., late of Michigan University, was also present.

The following resolution was unanimously adopted:

WHEREAS: Statement has been made by Dr. SAMUEL POTTER, President of this Society, that certain members of the profession, actuated by a spirit of malice, are circulating false reports, reflecting on his medical education, thereby injuring him in the minds of the profession; and

WHEREAS: This Society, in committee of the whole, has examined the letters, certificates, lecture tickets and diplomas which he possesses:—

Resolved, That we find that he has graduated at a college in good standing, and fully satisfied the requirements of the medical institutions of the country, in respect of primary educational qualifications, clinical and lecture courses, and a rigid examination.

E. M. ROSENKRANS, M. D.

E. A. GATCHELL, M. D. *Pres. pro tem.*

Sec'y pro tem.

Having examined the papers referred to, I concur in the above cheerfully.

C. C. OLMSTED, M. D.

Vice-President.

PITTSBURGH, PA., March 8th, 1880.

To all whom it may concern:

I hereby certify that I have critically examined all the certificates lecture tickets, medical diplomas, etc., of Samuel Potter, M. D., placed in my hands, and am prepared to say that the degree of M. D., conferred on him by the Homœopathic Medical College of Mo., and the Ad Euendem diploma awarded him by the Homœopathic Medical College of Chicago, Ill., are but the just rewards of proficiency and merit. I am fully convinced that the time devoted to the study of medicine, the advantages enjoyed, and the literary attainments reached, entitle him to the confidence of the public and the profession, as a well qualified physician.

J. C. BURGHER, M. D.

[*Ex-President American Institute of Homœopathy.*]

Like certificates have been furnished us from Drs. Wm. H. Holcomb and J. P. Dake, both Ex-Presidents A. I. H.

Park, Davis & Co., It is said are furnishing the profession with the New Anæsthetic, Bromide of Ethyl, or—Hydrobromic Ether—in the purest possible form.

This well-known firm are sending out a great variety of New Remedies among which may be mentioned, Manaca, (Francisca, Uniflora,) Menthol, Sanguinis, Bovinus Exsiccatus, (Dessicated Bullocks Blood,)—Defibrinated Blood.—They are also manufacturing very fine Gelatine Capsules, for Rectal Medication.

The Rectal Capsule is intended to take the place of the Suppository. They are furnished empty, and are of various sizes and can be filled with liquid, powder or oleate. They serve to enlarge the sphere of rectal med-

ication. can be used with children as well as adults, and most frequently brought into use when there is Nausea or inability to swallow.

We cheerfully recommend everything eminating from Park, Davis & Co., as being reliable and satisfactory.

Parvules.—Particular attention is directed to medicines put up in this form by Wm. R. Warner & Co., whose advertisement may be found in the *Investigator*.

This is another evidence that the old and new school are blending, Homœopathists and Allopathists, alike prescribe this convenient method of administration.

The manufacturers are reliable Chemists and Pharmaceutists, and their preparations will be found as represented.

We have just procured one of Appleby's fine Carriage Satchels. It is of the most approved pattern and is of itself a little Pharmacy, containing a good variety of Surgical instruments, sponges, roller bandages and all the medicines required for a country practice even. It has the advantage of being small and so constructed that the vials are not easily broken.

Everything in this line from the dollar case up to twenty, instruments in great variety, all of the recently introduced new remedies as well as the latest publications in Homœopathic literature can be found at the Pharmacy, No. 18 West Eagle Street, Buffalo, N. Y.

Reviews and Book Notices.

THE MICROSCOPE AND MICROSCOPICAL TECHNOLOGY.—A Text-Book for Physicians and Students, by Heinrich Frey, Prof. of Medicine in the University of Zurich. Translated and Edited by Geo. R. Cutter, M. D., Surgeon New York Eye and Ear Infirmary. Ophthalmic and Aural Surgeon to the St. Catharine and Williamsburgh Hospitals, etc. Illustrated by three hundred and eighty-eight engravings on wood, published by Wm. Wood & Co., N. Y.

This is a large work of 660 pages, and like everything published by this world-renowned firm, it is a representation of the highest style of the art.

The merits of the book can only be appreciated by a thorough knowledge of its contents. The manner of instruction is divisible into sections

of which there are no less than twenty-one. Its histological sections are the most elaborate, the most instructive and the nearest life and perfection of anything of the kind extant.

It's elementary sections beginning with the Theory of the Microscope, its use, modes of testing, mounting and coloring objects, are perfect and just what the student is in search of.

To the practitioner of medicine it is the most satisfactory and most desirable work for reference to Urinary deposits, and the delineation of Blood, Lymph, Chyle, Mucous and Pus Globules. At this advanced age of medical science, the Microscope is almost as indispensable as the Stethoscope or fever-thermometer.

But to become a good Microscopist requires no little tact diligence, and hard study, and to facilitate that end we most earnestly recommend Frey's most excellent work on the Microscope, in one handsome 8 vo. volume. Price, in cloth, $6; Colored leather, $7.

DR. STEPHEN SMITH'S NEW OPERATIVE SURGERY.—We have called attention to this book before, but having a prospective case of lithotomy in view, on which we were desirous of performing the *median* operation, we very naturally consulted the modern Operative Surgery for anything that might be introduced to facilitate this formidable proceedure.

We were not a little surprised to find the amount of valuable instruction on Lithotomy and Lithotrity, contained in this most interesting work.

It is equally as elaborate on almost every subject, and taking it from first to last we believe it contains within its lids more practical knowledge than any book of its size extent. We cheerfully commend it to the attention of both. practitioner and student. It is published by Messrs. Houghton Osgood & Co., Boston, Mass. Price $4 in cloth and $4.50 roan.

POSOLOGICAL TABLE.—Including all the officinal and the most frequently employed Officinal Preparations. By Chas. Rice, M. D., Chemist Department of Public Charities and Correction, N. Y., etc.

Revised and Approved by Members of the Medical Boards of Bellevue and Charity Hospitals, published by Wm. Wood & Company, N. Y. This Compend containing about 100 pages of closely arranged matter, represents in a condensed form the whole U. S., Ph., together with important formula from other Pharmacopœias

This is a very useful and desirable work and reflects much credit upon the author and publishers. It should be on the table of every practitioner and Pharmacist.